

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IRA A. JOHNSON,	:	No. 4:CV 04-1804
	:	
Petitioner	:	Judge Jones
	:	
v.	:	Magistrate Judge Mannion
	:	
JOHN A. PALOCKOVICH, <u>et. al</u> ,	:	
	:	
Defendants	:	

MEMORANDUM AND ORDER

April 13, 2006

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Currently pending before this Court is Plaintiff Ira A. Johnson's ("Plaintiff" or "Johnson") Motion for Relief from Judgment ("the Motion")(doc. 131) filed on March 2, 2006. The Motion has been fully briefed by the parties and is therefore ripe for our review.

For the following reasons, we will grant the Motion.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY:

Plaintiff commenced the instant *pro se* civil rights action against various defendants employed at SCI-Smithfield by filing a complaint (doc. 1) with this Court on August 16, 2004. This action was referred to Magistrate Judge Malachy E. Mannion. On November 2, 2004, Defendant Ronald Long, M.D. ("Defendant

Long”) filed a Motion to Dismiss. (Rec. Doc. 19). After the Motion to Dismiss was fully briefed by the parties, on May 27, 2005 Magistrate Judge Mannion entered a Report and Recommendation (doc. 56) recommending that we grant the Motion to Dismiss and dismiss the complaint as against Defendant Long.

Thereafter, on June 7, 2005, the Plaintiff filed a motion (doc. 57) with this Court requesting an extension of time to file objections to Magistrate Judge Mannion’s Report and Recommendations. On that same date, we entered an Order (doc. 58) granting Plaintiff until July 7, 2005 to file the said objections. However, due to an inadvertent mistake by the Court, we entered an Order (doc. 82) adopting the Report and Recommendations before the Plaintiff’s time to file objections had run. Following this Order (doc. 82), this Court received Plaintiff’s timely objections (docs. 86 and 87) and Defendant Long’s response (doc. 88) to Plaintiff’s objections.

DISCUSSION:

In the instant Motion, Plaintiff informs the Court that on June 30, 2005, which is after we prematurely adopted the Report and Recommendation but before Plaintiff’s time to object had run, he received responses to discovery requests. Plaintiff alleges he learned through this discovery that Defendant Long had a direct and personal involvement with the civil rights action that this Court prematurely dismissed as against him in that Defendant Long authorized prison officials to use

Oleoresin Capsicum (“Pepper Spray”) on the Plaintiff’s housing unit at SCI-Smithfield.

In light of the foregoing and in the interests of justice, will grant the instant Motion to the extent that we shall vacate our Order of June 29, 2005 (doc. 82) adopting the Report and Recommendation. We shall also refer the initial Motion to Dismiss (doc. 19) filed by Defendant Long back to Magistrate Judge Mannion to be decided in light of what Plaintiff characterizes as the new evidence regarding Defendant Long’s factual involvement. It may well be that this will not cause the Magistrate Judge to alter his recommendation; however we shall leave it to Magistrate Judge Mannion’s good judgment to determine whether he requires further submissions from the parties on the Motion to Dismiss.¹ Upon completion of his review of this matter, the Magistrate Judge shall render a Report and Recommendation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion for Relief from Judgment (doc. 131) is GRANTED.
2. This Court’s Order dated June 29, 2005 adopting the Report and Recommendation (doc. 82) is VACATED.

¹ For example, the Magistrate Judge may view Plaintiff’s asserted “new evidence” as merely a clarification of Plaintiff’s claim against Defendant Long. On the other hand, if this is indeed evidence that needs to be considered at this stage, the matter could be adjudicated under Fed. R. Civ. P. 56.

3. The Motion to Dismiss (doc. 19) is remanded to Magistrate Judge Mannion to be decided in a manner consistent with this Order.

s/ John E. Jones III

John E. Jones III

United States District Judge